IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 460 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRA.297/2001 Dated 15/07/2003

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PETITIONER: ACCUSED

RAJAN, C.NO.
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADV. SRI.SAJEEV.T.P.

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUPERINTENDENT,
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 460 of 2007

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Dated this the 21st day of March, 2007

O R D E R

The petitioner faced indictment in a prosecution under Sections 302 and 376 I.P.C. He was tried by the learned Addl. Sessions Judge, Pathanamthitta in S.C.No.22 of 1999. He was found not guilty and acquitted by the learned Sessions Judge.

2. The State preferred an appeal and a Division Bench of this Court by order dt. 15.7.2003 set aside the judgment of acquittal and found the appellant guilty. He was convicted and sentenced. The sentences under various sections were directed to run concurrently. It was specifically observed in the said judgment that:

> "The period of detention, if any, he has undergone as an under trial prisoner during investigation, enquiry or trial of this case shall be set off against the term of imprisonment."

Warrant of commitment was issued by this Court and the petitioner was sent to prison. In the said warrant of commitment also it is specifically stated that:

> "The period of detention, if any, he has undergone as an under trial prisoner during investigation, enquiry or trial of this case shall be set off against the term of imprisonment."

The petitioner is now undergoing the sentence. The petitioner has come to this court complaining that the petitioner has not been granted the benefit of set off in as much as the judgment of conviction and sentence as also the committal warrant issued do not specify the period for which the petitioner is entitled for set off.

3. Notice was ordered to the Prosecutor and the Superintendent of Central Prison, Trivandrum. The report of the Superintendent shows that the period of set off having not been specified in the warrant, he has not been able to grant set off. The report of the learned Addl. Sessions Judge, Pathanamthitta shows clearly that on perusal of the case records the petitioner was in judicial custody from 3.12.1997 to 23.8.2000 and he is entitled for set off for this period, both days inclusive.

4. The short prayer of the petitioner now is that it may be specified that the petitioner is entitled to set off under Section 428 Cr.P.C. for the said period from 3.12.97 to 23.8.2000. I am certainly satisfied that the prayer of the petitioner is absolutely justified.

5. This Crl.M.C. is allowed It is declared that the petitioner is entitled for set off from 3.12.1997 to 23.8.2000. The Registry shall communicate this order to the Superintendent of Central Prison, Trivandrum, who shall ensure that the petitioner is granted the benefit of such set off.

(R. BASANT)
Judge

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